IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2002

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.NO.4627 OF 2000

Tvl. Tamil Nadu Chlorates Limited
17-A, Vallabhai Road
Thokkikulam
Madurai-625 002. ..... Petitioner.

-Vs-

1.The Tamil Nadu Taxation Special
Tribunal represented by its
Registrar, Singaravelar Maligai
Second Floor, Chennai

2.The State of Tamil Nadu represented
by the Deputy Commercial Tax Officer
Madurai Rural North Circle, Madurai ..... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India for the relief of writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.T.Ayyaswamy,
Spl.Govt.Pleader (Taxes)

:ORDER

K.RAVIRAJA PANDIAN,J.

The writ petition is filed against the order of the Special Tribunal dated 15.12.1999 made in Tax Case (Revision) No.1585 of 1997.
2. The petitioner is a registered dealer. The petitioner claimed exemption from tax on the purchase of Potassium Chloride from Mani Agency for a sum of Rs.7,65,000/- during the assessment year 1986-87. Though the said Mani Agency has taken registration certificate on 19.12.1985, they had reported their closure of business from 31.5.1986. However, the purchase bills produced by the petitioner were after the period of closure i.e., from 1.8.1986 said to have been issued by Mani Agency. Therefore, the purchase

bills alleged to have been effected by the petitioner from 1.8.1986 from the said Mani Agency were verified by the Department. On enquiry, it was found that the said Mani Agency never carried any business at the address given as a place of business in the registration certificate and it also found on enquiries at the residential address that the property belonged to Antonyar Koil. For the past thirty years, no person by name Jayakumar was residing there. Further, the summon sent by the Department to the Office address by registered post with acknowledgement on 6.11.1987 has also been returned with an endorsement "no such addressee". The enquiry also revealed that no such person by name Jayakumar has ever carried on any business in that place. On verification of the bank payment, it was found that one K.Raja received the amount in a sum of RS.85,000/- in person and the cheque issued was encashe d and handed over to said Raja. It is also further found that there was variation in the signatures in the bills which were issued to the petitioner from Mani Agency and the one issued to one Pandian Chemicals Limited. It was also found on fact that the said Mani Agency never produced any accounts or filed any returns for the assessment years 1985-86 and 86-87. On that basis, the petitioner was levied purchase tax on the said turnover of Rs.7,65,000/- and also penalty was levied at 150 percent. On appeal, the levy of tax has been confirmed. However, the first appellate authority has reduced the penalty to fifty percent, which order has been sustained by the Appellate Tribunal on further appeal. The appellate order has been confirmed by the Special Tribunal in the revision filed by the petitioner.

3. Mr.Sundareswaran, learned counsel appearing for the petitioner has submitted that the petitioner has produced the bill for the purchase and if at all the first sale has not suffered tax, it is for the revenue to collect the same from the person, who effected the sale in favour of the petitioner. He further contended that the entire transaction has been reflected in the books of accounts and in the returns. Merely because the claim of exemption was rejected and the purchase tax was imposed, the return filed by the petitioner cannot be incorrect and incomplete and hence the penalty levied is against the provisions of the Act.

4. On the other hand, the learned Government Pleader appearing for the respondents submitted that it is proved by the Department beyond any doubt that the purchase made by the petitioner in respect of the turnover in question were all made from undisclosed sources. In order to cover up that undisclosed sources, bill were produced from the persons who were not carried on any business. The mere showing of transaction in the account and claiming exemption in the return would not absolve the petitioner from their deliberate non-disclosure of the assessable turnover by suppressing the real source of purchase and by producing bogus bills. The attitude of the petitioner is nothing but wilful and intentional attempt to evade payment of tax legally due to the Government and as such, the penalty imposed under Section 12(5) is quite in accordance with the provisions of the Act.

5. We heard the arguments of the learned counsel on either side and perused the materials on record.
6. Mr.Sundareswaran, learned counsel appearing for the petitioner concentrated much of his argument on the correctness of penalty since all the

lower authorities have come to the conclusion that the selling dealer ie., Mani Agency was a non-existing dealer and they never carried on any business in chemicals viz., Potassium Chloride. In order to interfere with such finding of fact by the authorities, no material except the argument advanced by the learned counsel for the petitioner that all the purchases were covered by the bills issued by Mani Agency has been produced. In the absence of any attempt to prove that Many Agency was virtually carrying on business in Potassium Chloride and in the face of the factual finding recorded by the authorities below that one Jayakumar has obtained a registration certificate in the name of Mani Agency in fertilizers and also reported the closure of business from 31.5.1986. The bills produced by the petitioner were all issued subsequent to that date. The dealer's place of business was inspected and on verification, it was found that no such agency was carried on in that place. The residential address given also is found to be bogus on the ground that the residential premises were owned by one Antonyar Koil, Madurai and it has been in occupation and possession of the person residing there for more than thirty years and it also further revealed on enquiry that no person in the name of Jayakumar was ever residing there and further the fact that the summons issued by the Department to the address given in the Registration Certificate was also returned as no such person was present and the sale price issued by Cheque was also encashed by one Raja of Raja Agencies. The mere argument that the purchases are covered by bills issued by Mani Agency cannot by any stretch of imagination be accepted. There is no error of law committed by the authorities in coming to the conclusion that the Many Agency is non-existing and bogus dealer and the petitioner taking advantage of the bills said to have been issued by Many Agency has claimed exemption. Hence, the levy of purchase tax cannot at all be faulted.

7. Now, coming to the question of imposition of penalty under section 12(3), nothing was agitated before the Special Tribunal in this aspect of the matter. The one and only point urged before the Special Tribunal, as seen from the order, was that the petitioner purchased goods from registered dealers and whose registration has not been cancelled and in such circumstances, there is absolutely no case to invoke Section 7-A of the Act. That has been repelled by the Special Tribunal. While repelling so, the Special Tribunal concluded that in terms of the ratio of the decision of the Madras High Court in the case of STATE OF TAMIL NADU VS. MAHALAKSHMI TEXTILE MILLS LTD. reported in (1996) 100 STC 269, the levy of penalty under Section 12(5)(iii) of the Act is in order.

8. Section 12(5)(iii) provides that the assessing authority may impose penalty in cases where the return submitted is found to be incorrect and incomplete between 50 to 150 percent on the difference in the tax payable on the turnover disclosed in the returns and determined by the assessing authority. So far as the present case is concerned, the turnover of the purchase from Mani Agency has been shown in the return and claimed exemption on the basis that the turnover was tax afforded turnover at the hands of the selling dealer. That has been rejected and tax has been determined by the assessing authority on the turnover. When no such ground has been raised or argument has been advanced before the Special Tribunal, we cannot allow the petitioner to raise such an argument here in the writ petition.

9. However, the judgment in which heavy reliance has been made by the petitioner in the case of STATE OF TAMIL NADU VS. INDIAN SILK TRADERS reported in (1994) 94 STC 157, in our view, would not advance the case of the petitioner in the facts and circumstances of the case. In that case, it was observed by this Court that a "false" return is different from an "incorrect and incomplete" return. The words "false return" connotes certain amount of deliberateness or willfulness, or an element of suppression on the part of the assessee. On the other hand the words "incorrect and incomplete" do not imply such deliberateness, suppression or willfulness in making a return. While the element of deliberateness, willfulness or blameworthy conduct on the part of the assessee may not be necessary for invoking section 12(5) of the Act, the bona fides of the assessee have to be gone into before imposing penalty. So far as the present case is concerned, the assessing Officer has given a very categorical finding that there has been wilful and intentional attempt to evade payment of tax legally, wilful non-disclosure of assessable turnover by suppressing the real source of purchase and by production of bogus purchase bills in order to evade tax. On that ground, the return was also rejected as incorrect and incomplete. Hence, we are of the view that the imposition of penalty is in accordance with Section 12(5)(iii) and it requires no interference from this Court.

10. The other decision in the case of STATE OF TAMIL NADU VS. MAHALAKSHMI TEXTILE MILLS LTD. reported in (1996) 100 STC 269 has been considered in a totally different set of facts, in the sense, that the original return filed was rectified by the assessee by filing a revised return before the completion of the assessment and paid the tax due thereon. In those circumstances, it was held that since the tax due from the assessee has been paid prior to the assessment by filing a revised assessment, no penalty was exigible in the facts of that case.

11. Mr.Sundareswaran also relied on the decision of this Court in the case of E.I.D.PARRY (I) LTD VS. ASST. COMMISSIONER (C.T.) (S.C.) reported in (2000) 117 STC 457 so as to contend that the penalty is not warranted in this case. Here again, we are not able to accept the submission of the learned counsel on the simple fact that was a case where on the facts of the case it was found that the failure on the part of the assessee to include the freight and transport charges in the taxable turnover was bona fide because of the various judgments rendered by this Court as to the includability of the freight and transport charges in the sale price. That was not the case in the facts of the present case.

12. The learned Government Pleader on the other hand relied on the decision of this Court in the case of CHENNAI TEXTILE CHEMICALS PRIVATE LTD. VS. STATE OF TAMIL NADU AND ANOTHER reported in (2002) 125 STC 107 to contend that the penalty is automatic. That was a case in which the constitutional validity of Section 12(3) as amended by ActNo.2 5 of 1993 was considered and in that case, it was held that the penalty imposed by the Sales Tax Authority is only a civil liability though it is penal in character. The element of mens rea is not always inter related or an essential condition precedent to the levy of civil liability in a taxation statute for violating a civil obligation and it can be dispensed with or excluded in the matter of levy of

civil penalty in a taxation statute. But in the facts of the present case, it is categorically established by the authorities, the bogus purchase bills were produced in order to claim exemption from payment of tax legally due to the Government and the said action of production of bogus bills would tantamount to wilful non-disclosure of assessable turnover with a malafide intention to claim the benefit of exemption.

13. The learned counsel appearing for the petitioner submitted an argument that penalty cannot be imposed on surcharge and additional tax on the ground that there is no plenary or substantive provision in the surcharge Act and Additional Sales-tax Act at the relevant point of time. Here again, we are not able to countenance the argument that no such point was raised before any of the authorities including the Tribunal. This is the first time that point has been raised before this Court at the time of argument based on certain subsequent decisions. If the law position on the levy of penalty on surcharge and additional sales tax is in favour of the petitioner, it is open to them to claim the benefit of the decision in their favour.

For the fore-going reasons, we are of the view that there is no error of law apparent on the face of the order of the Tribunal, which warrants any interference by this Court by invoking the provision of Article 226 of the Constitution of India. Hence, the writ petition is dismissed. However, there is no order as to costs.

Index :Yes
Website: Yes

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To:

1.The Registrar
Tamil Nadu Taxation Special
Tribunal, Singaravelar Maligai
Second Floor, Chennai

2.The Deputy Commercial Tax Officer
Madurai Rural North Circle,
State of Tamil Nadu,
Madurai

3.Commissioner (SMR),
State of Tamil Nadu,
Ezilagam, Chepauk,
Chennai-5.